



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

CERTIFIED MAIL NO. 7010 167 000 7048 0333
RETURN RECEIPT REQUESTED

IN REPLY: ENF-2-1
REFER TO: Docket No. R9-15-05

Tracy Rosser
Senior Vice President
Wal-Mart Transportation, LLC
702 SW 8th Street
Bentonville, Arkansas 72716-6209

Re: Wal-Mart Transportation, LLC Finding and Notice of Violation

Dear Mr. Rosser:

Enclosed for your information is a copy of a Finding and Notice of Violation ("NOV") that the United States Environmental Protection Agency ("EPA"), Region IX, is issuing to Wal-Mart Transportation, LLC ("Wal-Mart Transportation") for violations of the Clean Air Act ("Act"), specifically the California Air Resources Board's ("CARB") "Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria Pollutants from In-Use Heavy-Duty Diesel-Fueled Vehicles" (the "Truck and Bus Regulation"). The Truck and Bus Regulation is included in the federally-approved and federally-enforceable State Implementation Plan for the State of California.

Please be aware that sections 113(a)(1), 113(a)(3) and 113(b) of the Act authorize EPA to issue an order requiring compliance with the requirements of the Act, issue an administrative penalty order, or commence a civil action seeking an injunction and/or a civil penalty. Furthermore, section 113(c) of the Act provides for criminal penalties in certain cases.

In addition, section 306 of the Act, 42 U.S.C. 7606, the regulations promulgated thereunder (2 C.F.R. Part 180), and Executive Order 11738 provide that facilities to be utilized in federal contracts, grants and loans must be in full compliance with the Act and all regulations promulgated pursuant to it. A violation of the Act may result in Wal-Mart Transportation being declared ineligible for participation in any federal contract, grant, or loan.

If you wish to discuss the enclosed NOV, you may request a conference with EPA within ten (10) working days of receipt of this NOV. The conference will afford Wal-Mart Transportation an opportunity to present information bearing on the finding of violation, the nature of the violations, and any efforts it may have taken or proposes to take to achieve compliance.

If you have any questions pertaining to this NOV, please contact Cyntia Steiner of the Air Section, Enforcement Division at (415) 947-4112, or have your attorney contact Daniel Reich of the Office of Regional Counsel at (415) 972-3911.

Thank you for your cooperation in this matter.

Sincerely,



Kathleen H. Johnson
Director, Enforcement Division

Enclosure

cc w/enc: James Ryden, California Air Resources Board
Ilana Saltzbar, King & Spalding LLP



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

IN REPLY: ENF-2-1

REFER TO: Docket No. R9-15-05

James Ryden
Enforcement Division Chief
California Air Resources Board
P.O. Box 2815
Sacramento, CA 95812

Dear ^{Jim} Mr. Ryden:

Enclosed for your information is a copy of a Finding and Notice of Violation ("NOV") that the United States Environmental Protection Agency ("EPA"), Region IX, issued to Wal-Mart Transportation, LLC, for violations of the Clean Air Act ("Act"), specifically the California Air Resources Board's ("CARB") "Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria Pollutants from In-Use Heavy-Duty Diesel-Fueled Vehicles" (the "Truck and Bus Regulation"). The Truck and Bus Regulation is included in the federally-approved and federally-enforceable State Implementation Plan for the State of California.

Please be aware that sections 113(a)(1), 113(a)(3) and 113(b) of the Act authorize EPA to issue an order requiring compliance with the requirements of the Act, issue an administrative penalty order, or commence a civil action seeking an injunction and/or a civil penalty. Furthermore, section 113(c) of the Act provides for criminal penalties in certain cases.

If you have any questions concerning this NOV, please contact me or Cyntia Steiner of the Region 9 Air Enforcement Office at (415) 947-4112, or steiner.cyntia@epa.gov.

Sincerely,

A handwritten signature in blue ink, which appears to read "Kathleen H. Johnson", is written over a horizontal line.

Kathleen H. Johnson
Director, Enforcement Division

Enclosure

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 HAWTHORNE STREET
SAN FRANCISCO, CALIFORNIA 94105

In the Matter of)	
)	Docket No. R9-15-05
Wal-Mart Transportation, LLC)	
)	FINDING AND NOTICE
)	OF VIOLATION
Proceeding Under Section 113(a),)	
<u>Clean Air Act, as Amended</u>)	

This Finding and Notice of Violation (“NOV”) is issued pursuant to section 113(a)(1) of the Clean Air Act, 42 U.S.C. §§ 7401-7671q (“CAA” or the “Act”). This NOV is issued to Wal-Mart Transportation, LLC for violations of the Act. Section 113(a)(1) requires the Administrator of the United States Environmental Protection Agency (“EPA”) to notify any person in violation of a state implementation plan (“SIP”) of the violations. The authority to issue NOV’s has been delegated to the Regional Administrator of EPA, Region 9, and redelegated to the Director of the Enforcement Division for EPA, Region 9.

STATUTORY AND REGULATORY AUTHORITY

A. Clean Air Act

1. Pursuant to section 107(d) of the Act, 42 U.S.C. 7407(d), the Administrator promulgated lists of attainment status designations for each air quality control region (“AQCR”) in every state. These lists identify the attainment status of each AQCR for each of the criteria pollutants. The attainment status designations for California AQCRs are listed at 40 C.F.R. § 81.305.
2. There are seven AQCRs designated as nonattainment for fine particulate matter (i.e., PM_{2.5}) in California, including all of the San Joaquin Valley and the Los Angeles-South Coast Air Basin. *See* 40 C.F.R. § 81.305.
3. Section 110(a) of the Act requires that all states adopt SIPs that provide for the implementation, maintenance and enforcement of primary and secondary air quality standards. 42 U.S.C. § 7410(a).
4. A person’s failure to comply with any approved regulatory provision of a SIP renders the person in violation of an applicable implementation plan and subject to enforcement under section 113(a)(1) of the Act. 42 U.S.C. § 7413(a)(1).

- B. Title 13, Section 2025 of California Code of Regulations: On-Road Heavy-Duty Diesel Vehicles
5. On December 14, 2011, California Air Resources Board (“ARB”) adopted “Amendments to the Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen and Other Criteria Pollutants From In-Use Heavy-Duty Diesel-Fueled Vehicles,” codified at title 13, section 2025 of the California Code of Regulations (the “Truck and Bus Regulation”).
 6. The Truck and Bus Regulation was incorporated into the federal SIP, effective May 4, 2012. *See* 77 Fed. Reg. 20308 (April 4, 2012).
 7. Under section 2025(d)(17) of the Truck and Bus Regulation, “Diesel Particulate Filter” means “an emission control technology that reduces diesel particulate matter emissions by directing the exhaust through a filter that physically captures particulates but permits gases to flow through. . . .”
 8. Under section 2025(d)(18) of the Truck and Bus Regulation, “Diesel Particulate Matter (PM)” means “the particles found in the exhaust of diesel fueled compression ignition engines. . . .”
 9. Under section 2025(d)(28) of the Truck and Bus Regulation, “Fleet” means “one or more vehicles, owned by a person, business, or government agency, traveling in California and subject to this regulation.”
 10. Under section 2025(d)(29) of the Truck and Bus Regulation, “Fleet Owner” means, with certain exceptions, “either the person registered as the owner or lessee of a vehicle by the California Department of Motor Vehicles (DMV), or its equivalent in another state, province, or country, as evidenced on the vehicle registration document carried in the vehicle.”
 11. Under section 2025(d)(42) of the Truck and Bus Regulation, “Motor Carrier” is the same as defined in California Vehicle code section 408 for fleets other than those that are comprised entirely of school buses.
 11. Under section 2025(d)(47) of the Truck and Bus Regulation, “Person” means “an individual, corporation, business trust, estate, trust, partnership, Limited Liability Company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.”
 12. Under section 2025(d)(48) of the Truck and Bus Regulation, “PM BACT” means “the technology employed on the highest level VDECS for PM or an engine that is equipped with an original equipment manufacturer (OEM) diesel particulate filter and certified to meet 0.01 g/bhp-hr [brake horsepower per hour] certification standard.”

13. Under section 2025(d)(60) of the Truck and Bus Regulation, “Verified Diesel Emission Control Strategy (VDECS)” means “an emissions control strategy, designed primarily for the reduction of diesel PM emissions, which has been verified pursuant to the Verification Procedures. VDECS can be verified to achieve Level 1 diesel PM reductions (25 percent), Level 2 diesel PM reductions (50 percent), or Level 3 diesel PM reductions (85 percent). VDECS may also be verified to achieve NOx reductions. . .”
14. Under section 2025(d)(35) of the Truck and Bus Regulation, “‘Highest Level VDECS’ means the highest level VDECS verified by ARB under its Verification Procedure, Warranty and In-Use Compliance Requirements for In-Use Strategies to Control Emissions from Diesel Engines (Verification Procedure), title 13, CCR, sections 2700-2710, for a specific engine as of 10 months prior to the compliance date, which the diesel emission control strategy manufacturer and authorized diesel emission-control strategy dealer agree can be used on a specific engine and vehicle combination without jeopardizing the original engine warranty in effect at the time of application.
- (A) The highest level VDECS is determined solely on verified diesel PM reductions. Plus designations do not affect the diesel PM level assigned to a VDECS; that is a Level 3 Plus is the same diesel PM level as Level 3.
- (B) A Level 2 VDECS shall not be considered the highest level VDECS as long as a Level 3 VDECS can be retrofitted on a vehicle in the fleet.
- (C) Level 1 devices are never considered highest level VDECS for the purpose of this regulation.”
15. The Truck and Bus Regulation applies to diesel-fueled trucks and buses that are privately or federally owned, and to publicly and privately owned school buses, that have a manufacturer's gross vehicle weight rating (“GVWR”) greater than 14,000 pounds. The Truck and Bus Regulation requires, in part, Fleet Owners to upgrade their vehicles to meet specific performance standards for oxides of nitrogen (“NOx”) and particulate matter (“PM”).
16. Section 2025(g) of the Truck and Bus Regulation requires fleet owners to comply with the following Engine Model Year Compliance Schedule to meet PM BACT for all vehicles in the fleet with a GVWR greater than 26,000 pounds:
- a. By January 1, 2012, all subject vehicles with an engine model year of 1996 through 1999 must install a PM Filter.
- b. By January 1, 2013, all subject vehicles with an engine model year of 2000 through 2004 must install a PM Filter.
- c. By January 1, 2014, all subject vehicles with an engine model year of 2005 through 2006 must install a PM Filter.

This schedule applies to all fleets that have not reported to the ARB to use a flexibility option under section 2025(i) of the Truck and Bus Regulation.

17. Section 2025(x)(1) of the Truck and Bus Regulation provides that “[t]he vehicle owner shall comply with all applicable requirements and compliance schedules set forth in this regulation.”
18. Section 2025(x)(2) of the Truck and Bus Regulation provides that “[a]ny in-state or out-of-state motor carrier, California broker, or any California resident who operates or directs the operation of any vehicle subject to this regulation shall verify that each hired or dispatched vehicle is in compliance with the regulation and comply with the record keeping requirements of Section 2025(s)(4).”
19. Section 2025(x)(3) of the Truck and Bus Regulation provides that “[c]ompliance may be accomplished by keeping at the business location, a copy of the Certificate of Reported Compliance with the In-Use On-Road Diesel Vehicle Regulation for each fleet, or in the vehicle.”
20. Section 2025(s)(4) of the Truck and Bus Regulation provides that motor carriers or brokers must maintain bills of lading and other documentation identifying the motor carrier or broker who hired or dispatched the vehicle and the vehicle dispatched.

FINDINGS OF FACT

21. Wal-Mart Transportation LLC (“Wal-Mart Transportation”) a wholly-owned subsidiary of Wal-Mart Stores, Inc. Wal-Mart Stores, Inc. and Wal-Mart Transportation are Delaware Corporations whose principal place of business location is Bentonville, Arkansas. Wal-Mart Stores, Inc. has stores and distribution centers throughout the United States and the world.
22. Wal-Mart Transportation is a motor carrier that owns and operates diesel-fueled vehicles registered to be driven, in part, on California public highways. Wal-Mart Transportation’s Fleet supports 14 distribution centers and 296 retail units in California.
23. On June 16 and November 25, 2014, EPA, Region IX, issued information requests (“Information Requests”) to Wal-Mart Transportation pursuant to section 114 of the Act, 42 U.S.C. § 7414. The primary purpose of the Information Requests was to determine Wal-Mart Transportation’s compliance with the Truck and Bus Regulation. The Information Requests asked Wal-Mart Transportation to provide information regarding certain diesel-fueled vehicles owned, hired, and/or leased by Wal-Mart Transportation that have been operated in California since January 1, 2012.
24. Wal-Mart Transportation submitted its responses to the Information Requests to EPA, Region IX on August 5, August 29, September 10, September 19, and December 31, 2014 (collectively, “Wal-Mart Transportation’s Responses”).

25. Wal-Mart Transportation's Responses identify approximately 126 diesel-fueled vehicles with an engine model year prior to 2007 and a GVWR greater than 26,000 pounds that Wal-Mart Transportation operated in California in calendar years 2012, 2013, and/or 2014.
26. Wal-Mart Transportation's Responses identify one (1) diesel-fueled vehicle with an engine model year of 1999 and GVWR greater than 26,000 pounds that Wal-Mart Transportation operated in California between January 1, 2012 and June 16, 2014 without a PM Filter. This vehicle is listed in Appendix A of this NOV.
27. Wal-Mart Transportation's Responses identify ten (10) diesel-fueled vehicles with engine model years of 2000-2004 and GVWR's greater than 26,000 pounds that Wal-Mart Transportation operated in California during 2013 without PM Filters. These vehicles are listed in Appendix A of this NOV.
28. Wal-Mart Transportation's Responses identify thirteen (13) diesel-fueled vehicles with engine model years of 2005-2006 and GVWR's greater than 26,000 pounds that Wal-Mart Transportation operated in California during 2014 without PM Filters. These vehicles are listed in Appendix A of this NOV.
29. Wal-Mart Transportation's Responses indicate that Wal-Mart Transportation hired numerous motor carriers between January 1, 2012 and November 25, 2014, but did not verify these companies' compliance with the Truck and Bus Regulation. These companies are identified in Enclosure 2 of Wal-Mart Transportation's December 31, 2014 Response.

FINDINGS OF VIOLATION

30. Wal-Mart Transportation is a "Person" as that term is defined under section 2025(d)(47) of the Truck and Bus Regulation.
31. Wal-Mart Transportation has a "Fleet" of vehicles as that term is defined under section 2025(d)(28) of the Truck and Bus Regulation, is a "Fleet Owner" as that term is defined under section 2025(d)(29) of the Truck and Bus Regulation and is a "Motor Carrier" as that term is defined under section 2025(d)(42) of the Truck and Bus Regulation.
32. Wal-Mart Transportation did not report to ARB to use a flexibility option under section 2025(i) of the Truck and Bus Regulation and is thus subject to the requirements of the Engine Model Year Compliance Schedule set forth in section 2025(g) of the Truck and Bus Regulation.
33. Wal-Mart Transportation violated section 2025(g) of the Truck and Bus Regulation by failing to timely install PM filters on at least one (1) diesel-fueled vehicle that it owned and operated in California during 2012, 2013 and 2014.

34. Wal-Mart Transportation violated section 2025(g) of the Truck and Bus Regulation by failing to timely install PM filters on at least ten (10) diesel-fueled vehicles that it owned and operated in California during 2013.
35. Wal-Mart Transportation violated section 2025(g) of the Truck and Bus Regulation by failing to timely install PM filters on at least thirteen (13) diesel-fueled vehicles that it owned and operated in California during 2014.
36. Wal-Mart Transportation, as a motor carrier, violated section 2025(x)(2) of the Truck and Bus Regulation by failing to verify that motor carriers it hired between January 1, 2012 and June 16, 2014 were in compliance with the Truck and Bus Regulation.
37. Wal-Mart Transportation violated section 2025(x)(1) of the Truck and Bus Regulation by failing to comply with all applicable requirements and compliance schedules set forth in the Truck and Bus Regulation.

NOTICE OF VIOLATION

Notice is given to Wal-Mart Transportation that the Administrator of the EPA, by authority duly delegated to the undersigned, finds that Wal-Mart Transportation violated section 110 of the Act and section 2025 of the Truck and Bus Regulation in the California State Implementation Plan, as set forth in the Finding and Notice of Violation.

ENFORCEMENT

Section 113(a)(1) of the Act provides that when any person has violated any requirement or prohibition of an applicable implementation plan or permit, EPA may:

- issue an order requiring compliance with the requirements or prohibition of such implementation plan or permit, or
- issue an administrative penalty order pursuant to section 113(d) for civil administrative penalties of up to \$37,500 per day of violation, or
- bring a civil action pursuant to section 113(b) for injunctive relief and/or civil penalties of not more than \$37,500 per day for each violation.

42 U.S.C. § 7413(a)(1); 40 C.F.R. Part 19.

Furthermore, if a person knowingly violates any requirements of an applicable implementation plan more than 30 days after the date of issuance of this NOV, section 113(c) provides for criminal penalties or imprisonment, or both.

Under section 306(a) of the Act, the regulations promulgated thereunder (40 C.F.R. Part 15), and Executive Order 11738, facilities to be used in federal contracts, grants, and loans must be in full compliance with the Act and all regulations promulgated pursuant to it.

Violations of the Act may result in the facility being declared ineligible for participation in any federal contract, grant, or loan.

PENALTY ASSESSMENT CRITERIA

Section 113(e)(1) of the Act states that the Administrator or the court, as appropriate, shall, in determining the amount of any penalty to be assessed, take into consideration (in addition to such other factors as justice may require) the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any creditable evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation.

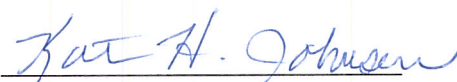
Section 113(e)(2) of the Act allows the Administrator or the court to assess a penalty for each day of violation. For the purposes of determining the number of days of violation, where the EPA makes a prima facie showing that the conduct or events giving rise to this violation are likely to have continued or recurred past the date of this NOV, the days of violation shall be presumed to include the date of this NOV and each and every day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by the preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.

OPPORTUNITY FOR CONFERENCE

Wal-Mart Transportation may, upon request, confer with EPA. The conference will enable Wal-Mart Transportation to present evidence bearing on the finding of violation, on the nature of the violations, and on any efforts it may have taken or proposes to take to achieve compliance. Wal-Mart Transportation has the right to be represented by counsel. A request for a conference with EPA must be made within ten (10) working days of receipt of this NOV, and the request for a conference or other inquiries concerning the NOV should be made in writing to:

Daniel Reich
Office of Regional Counsel (ORC-3)
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, California 94105
(415) 972-3911

DATED: 4/10/15


Kathleen H. Johnson
Director, Enforcement Division

APPENDIX A

List of vehicles by Vehicle Identification Number (VIN) and compliance deadline provided in the Response that failed to comply with section 2025(g) of the Truck and Bus Regulation:

Compliance Deadline	Number	VIN
January 1, 2012	1	11VA812E3YA000372
January 1, 2013	2	3HSCEAPR74N023286
	3	3HSCNAPR65N034944
	4	3HSCNAPR25N035038
	5	3HSCNAPR05N035040
	6	3HSCNAPR25N006414
	7	3HSCNAPRX5N006421
	8	11VA812E71A000543
	9	11VA812E01A000545
	10	11VA812E04A000517
	11	11VA812E24A000518
January 1, 2014	12	2HSCNAPR07C300527
	13	2HSCNAPR17C300665
	14	2HSCNAPR17C306451
	15	2HSCNAPR87C443306
	16	2HSCNAPR17C443308
	17	2HSCNAPR37C443309
	18	2HSCNAPRX7C443310
	19	2HSCNAPR17C443311
	20	2HSCNAPR97C443315
	21	2HSCNAPR07C443316
	22	2HSCNAPR27C443317
	23	2HSCNAPR47C443318
	24	2HSCNAPR37C443326